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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
10

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 vs.

14 JESUS MARIO SERRANO-PEREZ,

15 Defendant.

CASE NO. 15CR0286/16CV1716-LAB

**ORDER DENYING MOTION TO
VACATE SENTENCE**

16 Jesus Mario Serrano-Perez pled guilty to illegally reentering the United States in
17 violation of 8 U.S.C. § 1326, and was to sentenced to 72 months in September 2015. His
18 sentence was enhanced because he had previously been convicted of a “crime of violence.”
19 See United States Sentencing Guidelines (USSG), § 2L1.2, n. 1(B)(iii) (defining the term).
20 Serrano-Perez waived his right to appeal in exchange for sentencing concessions from the
21 government, so his sentence became final when the Court signed the Judgment on
22 September 14, 2015.

23 Serrano-Perez has now filed a motion under 28 U.S.C. § 2255 to vacate the
24 sentence. He contends that the Supreme Court’s recent ruling in *Johnson v. United States*,
25 ___ U.S. ___, 135 S. Ct. 2551 (2015) requires that the sentence be vacated. In *Johnson*, the
26 Court held that part of the Armed Career Criminal Act, 18 U.S.C. § 924(e) – in particular,
27 language in the so-called “residual clause” that authorized a sentence enhancement based
28 on a finding that a defendant’s prior conviction “present[ed] a serious potential risk of

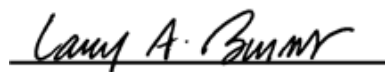
1 physical injury to another” – was unconstitutionally vague and couldn’t be relied on to
 2 enhance a sentence. But the holding in *Johnson* doesn’t implicate the definition of “crime
 3 of violence” as used in section 2L1.2 of the Sentencing Guidelines, which does not include
 4 the residual clause language. Instead, section 2L1.2’s definition authorizes a sentence
 5 enhancement when the defendant has either been convicted of certain enumerated offenses
 6 or of any offense that “has as an element the use, attempted use, or threatened use of
 7 physical force against the person of another.” Enhancing a defendant’s sentence based on
 8 his prior conviction is proper when the elements of the prior conviction match the generic
 9 definition of a “crime of violence” under federal law. *Taylor v. United States*, 495 U.S. 575,
 10 602 (1990).

11 Before he was sentenced in this case, Serrano-Perez was convicted of inflicting
 12 corporal injury on a spouse in violation of California Penal Code § 273.5(a), PSR¹ at 7. The
 13 elements of that crime categorically match the elements of the crime of violence definition
 14 under section 2L1.2. *Banuelos-Ayon v. Holder*, 611 F.3d 1080, 1083-84 (9th Cir. 2010). See
 15 also *United States v. Ayala-Nicanor*, 659 F.3d 744, 752 (9th Cir. 2011) (holding that § 273.5
 16 is a categorical crime of violence under the force clause of the illegal reentry guidelines,
 17 § 2L1.2); *United States v. Laurico-Yeno*, 590 F.3d 818, 823 (9th Cir. 2010) (same).

18 *Johnson* is inapposite to Serrano-Perez’s case – the Court didn’t rely on any version
 19 of any “residual clause” in imposing his sentence. His motion is **DENIED**.

20
 21 **IT IS SO ORDERED.**

22 DATED: October 27, 2016

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24 HONORABLE LARRY ALAN BURNS
 25 United States District Judge
 26
 27

28 ¹ “PSR refers to the Presentence Report filed in Serrano-Perez’s case on May 26,
 2015.